

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. REEVES and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Dallas, TX

*Docket No. 99-618; Submitted on the Record;
Issued September 8, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's claim for an emotional condition is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

This case has been before the Board previously. By decision and order dated February 27, 1997, the Board found that the Office of Workers' Compensation Programs properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act.¹ The law and facts as set forth in the previous decision and order are incorporated herein by reference.

Subsequent to the February 27, 1997 decision, on May 31, 1997 appellant requested reconsideration by the Office and submitted additional evidence. By decision dated October 8, 1997, the Office denied appellant's request on the grounds that it was untimely filed. On October 24, 1997 appellant filed a second appeal with the Board and requested oral argument.² On April 30, 1998 the Director of the Office, filed a motion to remand with the Board. The Director acknowledged that appellant's reconsideration request of May 31, 1997 had been timely filed, and the case should, therefore, be remanded to the Office for further development. By letter dated May 12, 1998, appellant requested that the motion be granted. In an order dated July 7, 1998, the Board granted appellant's motion and remanded the case to the Office.

In an August 31, 1998 decision, the Office denied modification of the prior decision. On September 28, 1998 appellant again requested reconsideration and submitted additional

¹ Docket No. 96-949. The Board also found that the Office properly denied appellant's request for a hearing as untimely.

² Docket No. 98-284.

evidence. By decision dated November 16, 1998, the Office again denied modification. The instant appeal follows.³

The Board finds that the Office properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act.⁴

Section 8122(a) the Act states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."⁵ Section 8122(b) provides that in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.⁶ Section 8122(d)(2) provides that the time limitations of sections 8122(a) and 8122(b) do not "run against an incompetent individual while he is incompetent and has no duly appointed legal representative."⁷

Subsequent to the Board's February 27, 1997 decision, appellant submitted⁸ a report dated May 29, 1998 in which Dr. Sarah M. DeLand, a Board-certified psychiatrist, advised that she began treating appellant in 1996. Dr. DeLand noted that she had reviewed all of appellant's past psychiatric records "that I have been able to locate" and opined that appellant had been significantly impaired from 1981 "until fairly recently," concluding that she was "too impaired for many years to be able to prepare rational, coherent and complete legal documents."

It is appellant's burden to show that she is incompetent for a given period by submitting medical evidence stating that her condition was such that she was not capable of filling out a form or of otherwise furnishing the relatively simple information necessary for filing a claim and satisfying the limitation requirements.⁹ The Board finds that Dr. DeLand's report is to general

³ Appellant requested oral argument before the Board in the instant case. Oral argument was initially scheduled for October 21, 1999. At appellant's request, oral argument was rescheduled for July 19, 2000. Appellant failed to appear at the appointed time for the hearing. The Board, therefore, directed that the appeal proceed on the record submitted; see 20 C.F.R. §§ 501.5(c) and 501.6(a). The Board further notes that subsequent to appellant's appeal to the Board on October 24, 1997, on November 13, 1997 she again requested reconsideration. By decision dated December 12, 1997, the Office denied the reconsideration request on the grounds that it was untimely filed. Appellant then requested a hearing and, in a March 2, 1998 decision, an Office hearing representative denied the request because it was untimely. The Board and the Office may not have concurrent jurisdiction over the same issue and, therefore, the December 12, 1997 and March 2, 1998 decisions of the Office are null and void; see *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 5 U.S.C. § 8122(a).

⁶ 5 U.S.C. § 8122(b).

⁷ 5 U.S.C. § 8122(d)(2).

⁸ She also submitted evidence that had previously been reviewed by the Office and the Board and evidence that was irrelevant to the issue at hand.

⁹ *Garyleane A. Williams*, 44 ECAB 441 (1993); *Paul S. Devlin*, 39 ECAB 715 (1988).

and therefore insufficient to establish that appellant's condition rendered her incapable of performing these or similar tasks such that she would be considered incompetent within the meaning of the Act.¹⁰ Appellant has therefore failed to show that the time limitations of sections 8122 do not run against her. The Office, therefore, properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act.

The decisions of the Office of Workers' Compensation Programs dated November 16 and August 31, 1998 are hereby affirmed.

Dated, Washington, D.C.
September 8, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ Furthermore, appellant has not shown that she is entitled to have the time limitations toll due to "exceptional circumstances" as provided by section 8122(d)(3) of the Act; *see* 5 U.S.C. § 8122(d)(3). For instance, an "exceptional circumstance" recognized by the Secretary of Labor is where an employee is a prisoner of war. Appellant has not shown that she was under that type of circumstance; *see Paul S. Devlin, supra* note 9 at 726.